

May 30, 2013

Overnight Delivery

Ms. Vicki Simons, Director
Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Title VI Civil Rights Complaint and Petition for Relief or Sanction - Alabama
Department of Environmental Management Permitting of Arrowhead Landfill in
Perry County, Alabama (EPA OCR File No. 01R-12-R4)**

Dear Ms. Simons:

This Complaint is filed pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and 40 C.F.R. Part 7. 40 C.F.R. § 7.35(b) provides:

A recipient [of EPA financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

Complainants allege that the Alabama Department of Environmental Management (ADEM) violated Title VI and EPA's implementing regulations by reissuing and modifying, on September 27, 2011 and February 3, 2012 respectively, Solid Waste Disposal Facility Permit No. 53-03 authorizing Perry County Associates, LLC to construct and operate the Arrowhead Landfill, a municipal solid waste landfill in Perry County, Alabama which has the effect of adversely and disparately impacting African-American residents in the adjacent community.

Complainants request that the EPA Office of Civil Rights accept this Complaint and conduct an investigation to determine whether ADEM violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7. If a violation is found and ADEM is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants petition EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to ADEM.

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I. Title VI Background

“Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating.” *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (EPA, Feb. 5, 1998) (“*Interim Guidance*”) at 2 (footnote omitted); *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*, 65 Fed. Reg. 39667, 39680 (2000) (“*Draft Guidance*”).¹ “Facially-neutral policies or practices that result in discriminatory effects violate EPA’s Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.” *Interim Guidance* at 2.

A complete or properly pleaded complaint must (1) be in writing, signed, and provide an avenue for contacting the signatory (e.g., phone number, address); (2) describe the alleged discriminatory act(s) that violates EPA’s Title VI regulations (i.e., an act that has the effect of discriminating on the basis of race, color, or national origin); (3) be filed within 180 calendar days of the alleged discriminatory act(s); and (4) identify the EPA financial assistance recipient that took the alleged discriminatory act(s). *Interim Guidance* at 6; *Draft Guidance*, 65 Fed. Reg. at 39672. In order to establish a *prima facie* case of adverse disparate impact, EPA must determine that (1) a causal connection exists between the recipient’s facially neutral action or practice and the alleged impact; (2) the alleged impact is “adverse;” and (3) the alleged adversity imposes a disparate impact on an individual or group protected under Title VI. *Yerkwood Landfill Complaint Decision Document*, EPA OCR File No. 28R-99-R4 (July 1, 2003) at 3; *New York City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2nd Cir. 2000); *Draft Policy Papers Released for Public Comment: Title VI of the Civil Rights Act of 1964: Adversity and Compliance With Environmental Health-Based Thresholds, and Role of Complainants and Recipients in the Title VI Complaints and Resolution Process*, 78 Fed. Reg. 24739, 24741 (2013).

“If a preliminary finding of noncompliance has not been successfully rebutted and the disparate impact cannot successfully be mitigated, the recipient will have the opportunity to ‘justify’ the decision to issue the permit notwithstanding the disparate impact, based on the substantial, legitimate interests of the recipient.” *Interim Guidance* at 11. *See Draft Guidance*, 65 Fed. Reg. at 39683. “Merely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification. Rather, there must be some articulable value to the recipient in the permitted activity.” *Interim*

¹ On June 27, 2000, EPA published *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*, 65 Fed. Reg. 39667-39687 (2000). The Preamble to the *Draft Guidance* states that “[o]nce the *Draft Revised Guidance for Investigating Title VI Administrative Complaints* is final, it will replace the *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Interim Guidance*) issued in February 1998.” 65 Fed. Reg. at 39650. The *Draft Guidance* has never been made final and consequently, the *Interim Guidance* issued in February 1998 has not been replaced.